IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18539 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE RAJPIPLA VIBHAG KHADI GRAMODHYOG VIKAS SANGH & 1 - Petitioner(s)

Versus

THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR CHIRAG B PATEL for Petitioner(s) : 1 - 2.
MR HEMANG PARIKH AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 05/12/2007

ORAL JUDGMENT

1. RULE. In light of the view that the Court is inclined to adopt the petition is taken up for final hearing and disposal today. The learned advocate for the respondents is directed to waive service.

2. The petitioner-Trust was running an Ashram Shala at Jetpur, Tal.Nandod, District: Narmada on the basis of permission granted by the respondent-Authorities on 28.03.1999 for 120 students. It appears that thereafter there were some difficulties in running the school. Ultimately, the petitioner-Trust constructed a building for running Ashram Shala at Virpor, 1.5 Kms. away from Jetpur, and moved an application for revival of the permission to run the Ashram Shala which had been cancelled due to various deficiencies. The said application was rejected by the respondent-Authorities and the petitioner challenged order dated 10th July, 2005 by way of Special Civil Application No.962 of 2005. The said

petition came to be allowed vide Judgment dated 13.07.2006 wherein it was observed by this Court:

> *"3.1 Only on this ground, I would not have been inclined to interfere with the impugned order. However, I find that after a positive recommendation by the concerned authority in favour of the petitioner, the materials which are sought to be pressed in service for rejecting the application of the petitioner and for passing the impugned order are the reports collected through surprise check. These reports are produced by respondents at Annexure G-1 and G-2 and letter dated 8/9/2004 and 5/10/2004 respectively. These reports were never supplied to the petitioners. After the entire hearing was over in the matter some material was collected behind the back of the petitioners. Reports on the basis of such exercise collected, taken on record, relied upon and used for the purpose of passing an adverse order against the petitioners. All these things have been done without ever suppling the copies of the same to the petitioners or without giving any opportunity to the petitioners to explain its stand with regard to the same and such procedure adopted would offend the principles of natural justice".*

3. The Court also directed that the respondent-Authorities shall consider the matter afresh and it will be open to the petitioners to make submissions within a period of two weeks from the date of the Judgment.

4. The order which is under challenge is dated 18.04.2007. The order records that pursuant to the Judgment of this Court vide communication dated 19.08.2006 the petitioner was called upon to remain present for hearing on 2nd September, 2006. Thereafter, the order records that the latest inspection report dated 31.1.2007 states that the Institution has not made available adequate facilities of building and other attendant requirements for 120 students. That the petitioner was informed in past to remove the deficiencies but there has been no response from the Institution. It is further stated that that the School has not complied with the requisite conditions. Therefore, earlier order dated 10.1.2005 has been declared to be operative.

5. Heard the learned advocate for the petitioners. It is submitted that the impugned order has been passed due to political mala-fides of respondent-Authorities and for this purpose, he invited attention to certain observations made by this Court in the earlier Judgment dated 13.7.2006 in the petitioners' own case.

6. On behalf of the respondent-Authorities the learned AGP has vehemently contended that in absence of requisite conditions being fulfilled and being complied with the impugned order could not faulted with and that all the material which was available on record had been furnished to the petitioner. That the petitioner was aware about the deficiencies on the basis of which the application for revival has been rejected and hence, the Authorities are justified in passing the impugned order. Lastly it was submitted that, in any view of the matter, the petitioner must be directed to establish from record that necessary building and attendant facilities are available for the purpose of instructing and housing 120 children.

7. As can be seen from the impugned order, respondent-Authority itself has recorded that hearing took place on 2nd September, 2006 when the representatives of the petitioner-School remained present. Thereafter, the order records that after taking into consideration the submissions made on behalf of the petitioners, and the report of the Commissioner dated 31.01.2007, the order has been made. Thus, it is apparent that the report which forms the basis for rejecting application moved by the petitioner was not in existence on the day of hearing, namely, 2nd September, 2006. Obviously therefore, the said material could not have been supplied to the petitioner, and if material which was not in existence at the time of hearing, has been relied upon by the Authority without giving an opportunity to the petitioner to explain or rebut the said material, the impugned order would stand vitiated due to violation of principles of natural justice. In the earlier round of proceedings also similar situation obtained. Despite that the respondent-Authority has adopted the same approach. The plea that the petitioner was aware about the

deficiencies is required to be recorded to be rejected. If the petitioner was aware about the deficiencies when the hearing took place where was the necessity for the respondent-Authority to obtain a report almost four months after the date of hearing and then place reliance on what was stated in the report to reject the claim made by the petitioner.

8. In the circumstances, it is apparent that the impugned order dated 18.04.2007 having been made in violation of principles of natural justice cannot be sustained and is hereby quashed and set aside. In the view that the Court has taken, the Court has not examined the respective stands of the parties on merits of the controversy, as essentially the said issues are questions of fact, namely, whether adequate facilities are available or not. In the circumstances, the second part of the prayer to issue a mandamus to the respondent-Authorities to grant revival of the petitioner-School cannot be granted.

9. The proceedings stand restored to file of respondent-Authority who shall supply the report

dated 31st January, 2007 and any other material or evidence on which the respondent-Authority intends to rely to the petitioner within a period of two weeks from today. The petitioner shall thereafter make a representation / submissions within a week from the date of receipt of such material, and respondent-Authority shall thereafter pass a reasoned speaking order in accordance with law within a period of further two weeks from the date of receipt of the submissions of the petitioner after hearing the petitioner.

10. The petition is allowed accordingly in the aforesaid terms. Rule made absolute. Respondent-Authorities shall pay costs of this litigation quantified at a sum of Rs.5,000/- (Rupees Five Thousand Only).

(D.A.MEHTA, J.)

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